

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Susan Dean/ 797-1042

SUBJECT: Ordinance

TITLE OF AGENDA ITEM:

An Ordinance of the Town Council of the Town of Davie, amending the Town of Davie Code of Ordinances, Chapter 9, entitled "Garbage and Refuse"; providing for severability; and providing for an effective date.

REPORT IN BRIEF: The intent of this Ordinance is to amend Ordinance 2001-52 passed by the Town Council on December 19, 2001. This Ordinance provided for "private collection services for collection of recovered materials at commercial establishments." However, after its passage, this Ordinance was not codified. At the request of various haulers, three sections were studied by the Town Attorney for language changes and approved for Amendment.

Section (d) 5: The original language of Ordinance 2001-52 provides for collection of recovered materials between 7:00 a.m. and 7:00 p.m. The amendment brings the collection time into conformance with the hours of solid waste collection as referred to in the Solid Waste Franchise Agreement in Section 2.2.5.

Section (d) 9: The original language of Ordinance 2001-52 does not allow a Registrant to deliver recovered materials to any facility "that is permitted as a solid waste management facility." The intent of this section was to prevent recovered materials from being treated as solid waste, however, since there are facilities that are permitted for both recovered materials and solid waste, the amendment adds the wording "that is permitted solely as a solid waste management facility." It adds language to allow for a Registrant to take recovered materials to a multi-use facility.

Section (f)5: This amendment adds language to clarify that the inspection of books and records will be done at Registrant's place of business, and that the only information the Registrant is required to give is that which is in accordance with the F.S.403.7046.

PREVIOUS ACTIONS: Ordinance 2001-52, passed on December 19, 2001

CONCURRENCES: None

FISCAL IMPACT: None

RECOMMENDATION(S): Adopt the Ordinance

Attachment(s):
Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER NINE OF THE TOWN OF DAVIE CODE OF ORDINANCES ENTITLED GARBAGE AND REFUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE.

1. WHEREAS, Section 403.7046, Florida Statutes, provides for the regulation of recovered materials; and
2. WHEREAS, the Town does not require a commercial establishment that generates recovered material to sell or otherwise convey its recovered materials to the local government or to a facility designated by a local government; and
3. WHEREAS, the Town does not restrict a generator's right to sell or otherwise convey recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of Florida Statutes; and
4. WHEREAS, prior to doing business within the jurisdiction of a local government, a recovered materials dealer must provide the local government with a copy of the certification from the Florida Department of Environmental Protection; and
5. WHEREAS, staff recommends that the Town adopt an ordinance, consistent with the requirements of Florida Statutes, to establish a registration program with regards to recovered materials; and
6. WHEREAS, the Town Council concurs with the recommendation of staff; and
7. WHEREAS, the Town Council of the Town of Davie deems it in the best interest of the Town to amend the Town Code to provide for registration related to the collection of

recovered materials at commercial establishments with the Town of Davie;

8. NOW,
FLORIDA, that:

THEREFORE,

9. SECTION 1. That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption hereof.

10. SECTION 2. That Chapter Nine of the Code of Ordinances of the Town of Davie, Florida, is hereby amended as follows:

11.

12. **Sec.1-01. Private collection services for recovered materials at commercial**
13. **establishments.**

1. *Intent.* It is the intent of the Town and the purpose of this subsection to promote the public health, safety and general welfare by authorizing a registration program within the Town of Davie for the collection of recovered materials.
2. *Definitions.* For the purpose of this section, the following terms shall have meanings indicated (in the event any definition in this section conflicts with the definition in F.S. §403.703, the definition in F.S. §403.703 controls):
 - a) *Certified* recovered materials dealer means a dealer certified under §403.7046, Florida Statutes.
 - b) *Commercial establishments* mean a property or properties zoned or used for commercial or industrial uses, or used by an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and excludes property or properties zoned for single-family residential or multifamily residential uses.
 - c) *“Construction and demolition debris”* means discarded materials generally considered to be not water-soluble and nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of

solid waste will cause it to be classified as other than construction and demolition debris. The term also includes:

- i) Clean cardboard, paper, plastic, wood and metal scraps from a construction project;
 - ii) Except as provided in §403.707(12)(j), unpainted, non-treated wood scraps from facilities manufacturing materials used for construction of structures or their components and unpainted, non-treated wood pallets provided the wood scraps and pallets are separated from the other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practice of the generating industry to minimize the commingling of wood scraps or pallets with other solid waste; and
 - iii) De minimis amount or other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.
- (d) *Fiscal* means October 1 through September 30.
- (e) *Person* means any and all persons, natural or artificial, including any individual, firm or association, partnership, joint venture, or other entity of any kind, type, or description engaging in the conduct or activity with which this section is concerned.
- (f) *Recovered materials* means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled and have been diverted and source separated or have been removed from the solid waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste. Construction and demolition debris is not a Recovered Material and therefore shall constitute solid waste.
- (g) *Registrant* means a Certified Recovered Materials Dealer who has registered with the Town in accordance with the requirements of this section.
- (h) *“Solid waste management facility”* means any solid waste disposal area, volume reduction plant, transfer station, materials recovery facility, or other facility, the purpose of which is resource recovery or the disposal, recycling, processing, or storage of solid waste. The terms does not include recovered materials processing facilities which meet

the requirements of §403.7046, except the portion of such facilities, if any, that is used for the management of solid waste.

- (i) *Source-separated* means the recovered materials that are separated from solid waste where the recovered materials and solid waste are generated. The term does not require that various types of recovered materials be separated from each other and recognizes de minimis solid waste, in accordance with industry standards and practices, may be included with recovered materials. Materials are not considered source separated when two or more types of recovered materials are deposited in combination with each other in a commercial collection container located where the materials are generated and such materials contain more than ten (10) percent solid waste by volume or weight. For purposes of this subsection, the term “various types of recovered materials” means metals, paper, glass, plastic, textiles, and rubber.
- (j) “*Yard trash*” means vegetative matter resulting from landscaping maintenance and land clearing operations.
- (k) This Ordinance adopts those definitions contained within F.S. §403.703.

3. Registration and application.

- (a) *Registration and application.* Any person who engages in the purchasing, transporting and processing of recovered materials at commercial establishments shall register with the Town in accordance with the requirements of this section. The registrant shall submit an original and one copy of all required information to the Recycling Coordinator. The registration required by this section shall be in addition to and not satisfied by any occupational license which may be required. Applications for registration required by this section shall be made to the Town upon such form and in such manner as prescribed by the Town. The application shall be in such form to elicit the following information and such other information as may be required from time to time:

- 1) Registration fee. To be acceptable for filing, an application for registration shall be accompanied by a registration fee in the following amount, as appropriate:

Initial registration application or reapplication.....	\$200.00
Annual Renewal Registration.....	\$200.00
Transfer of registration.....	\$100.00

- 2) Name and address of the dealer/registrator, including the identification of the owner or operator for the dealer; if the applicant is a business entity, its general partner or limited partners, its corporate officers and directors. Any applicant that

operates under a fictitious name shall submit information that such fictitious name is registered in the State of Florida and held by the applicant;

- 3) Its permanent place of business, and mailing address, if different;
- 4) A copy of the registrant's recovered materials certification under F.S. §403.7046; and
- 5) Certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of §403.7046, Florida Statutes, as amended from time to time.

(b) *Signatures; submission.*

- 1) The registration and application for hauling recovered materials shall be signed by the individual submitting the application or, in the case of a corporation, by a corporate officer thereof or, in the case of a partnership or other association, by a member of the partnership or association. Provided, however, that for a publicly held corporation which has twenty-five (25) or more shareholders, the signatures of the local managing officer shall be sufficient. The completed registration shall be submitted to the Recycling Coordinator.
- 2) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of the application commitments, and certifying that the application meets all federal, state and local law requirements.
- 3) A signed statement by the applicant as part of the process that it is understood that the mixing of recovered materials with garbage or trash contaminates the product and renders it garbage or trash. In other words, garbage and trash shall not be mixed with recovered materials and shall be source separated.

(c) Once it has been determined by the Recycling Coordinator or his designee, that the registration application is complete, upon approval of the registration, registrants shall be entitled to operate for a period of one (1) year from the date of issuance; provided, however, the registration shall be for the period of October 1 through September 30 of each fiscal year.

(d) In addition to the above, the Registrant shall meet the following requirements:

- 1) Registrant must provide to the Town a copy of the recovered materials reporting forms, as submitted to the State of Florida Department of Environmental Protection.
- 2) The reporting format, and reporting frequency shall be established by the Town pursuant to §403.7046, which shall, at a minimum, including requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period emanating from the Town of Davie; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste from the Town of Davie. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in §812.081(1)(c), is confidential and exempt from the provisions of section 24(a), Article I of the State Constitution and Section 119.97(l). The above notwithstanding, any and all required reports shall be in accordance with Rule Chapter 62-722, Florida Administrative Code, as amended from time to time.
- 3) Source-separated all recovered material, provided, however, that containers of mixed types of recovered materials which contain more than ten percent (10%) solid waste, shall not be deemed to be source separated.
- 4) Vehicles used to transport recovered materials shall meet all applicable regulations of the Florida Department of Transportation and shall be capable of preventing spillage or accidental release of recovered materials during transport.
- 5) The registrant shall provide service to any commercial property between the hours of 7:00 A.M. and 7:00 P.M., except for commercial properties which are not abutting residential areas in which event those commercial properties may be serviced between the hours of 5:00 A.M. and 7:00 P.M.
- 6) The registrant shall comply with all applicable federal, state and local laws, regulations and ordinances.
- 7) Registrant shall conduct all collection, handling and processing of recovered materials in accordance with the requirements of this section and the certification issued pursuant to Rule 62-722, Florida Administrative Code, as amended from time to time.
- 8) In no event shall the registrant perform commercial solid waste services under the guise of collecting, transporting, processing,

or disposing of recovered materials.

- 9) Registrant shall not deliver recovered materials to a facility which is permitted solely as solid waste management facility. ~~unless the Registrant has given prior notification to the Town's Recycling Coordinator, and Registrant has received authorization to utilize such facility.~~ Registrant can take recovered materials to a properly and currently Florida State licensed facility, either sole or multi-use recycling facility.
 - 10) Registrant shall provide a copy of its certification and registration to any commercial generator of recovered materials, the registrant's agents and contractors, or to customers who request such proof of registration.
- (e) If any of the registration information submitted by the registrant changes during the terms of the registration, the registrant shall report those changes to the Town within thirty (30) calendar days of the change.
 - (f) The registrant shall pay to the Town the required annual renewal of the registration fee between September 1 and October 1 of each fiscal year, to be paid in advance.
- 4) *Transferability.* No registration issued pursuant to this section may be assigned or transferred without the prior written approval of the Town.
 - 5) *Inspection of books and records.* The Town shall have the right at all times upon reasonable notice to inspect the relevant books and records of Registrant, at Registrant's place of business or at such other location as requested by the Town of Davie, which books and records would show compliance or non-compliance with F.S. 403.7046 and any and all federal and state laws and regulations. Additionally, the Registrant shall automatically provide to the Town within ten (10) days of receiving same, a copy of all DEP reports and federal and state reports or notices of violation concerning Registrant and/or Registrant's business operations and any violations of any state or federal laws or regulations. ~~The inspection shall be for the purpose of verifying that the registrant is in compliance with the requirements of this section. The books and records of the registrant shall be maintained at a location within Broward County, Florida, or produced at such location upon request of the Town.~~
 - 6) *Violation; penalty.*
 - a) *Violation.* Each violation of this section or any of its subsections is deemed a separate and distinct infraction of this Code; however, for the first violation of operating without a registration the hauler or dealer shall be given a written warning and allowed FIVE (5) calendar days to apply

for and receive the required registration. Until such time as the required registration is obtained, no person shall engage in the conduct or activity with which this section is concerned.

b) *Penalty.* Any person who violates any provision of this section shall be punished as provided herein:

1. *Fine.* Each violation of this section shall be punishable by a minimum civil penalty of two hundred fifty and 00/100 dollars (\$250.00). A maximum civil penalty of five hundred and 00/100 dollars (\$500.00) may be assessed plus the costs associated with investigation and prosecution together with any equitable remedies deemed reasonable and proper by the court.
2. *Revocation.* The violation of the terms and conditions of this section may be cause for revocation or registration. The Town Administrator may, upon consistent and repeated violations of this section, revoke a registration for a violation as aforementioned and may immediately declare such registration null and void, and, upon such declaration, the hauler issued the registration shall immediately cease all operations and shall be considered to have forfeited such registration and the rights acquired thereunder. Should the Town Administrator decide to revoke a registration, he/she shall provide the hauler with notice of such revocation and the reasons therefore. Such notice shall be sent certified mail, return receipt requested. Upon receipt of such notice, the hauler may appeal such revocation to the Town Council, and the appeal and hearing thereon shall be conducted in accordance with the following procedures:
 - a. Should a hauler seek appeal from the revocation of the registration, the applicant shall furnish notice of such request for appeal to the Town Clerk no later than twenty (20) calendar days after the date of receipt of the certified letter advising the applicant of revocation of the registration.
 - b. Upon receipt of a request for appeal, the Town Clerk shall thereupon fix the date and time at which the Town Council shall hear the appeal, such hearing to be held not less than ten (10), nor more than thirty (30) calendar days subsequent to the date upon which such request for appeal was filed with the Town Clerk. Upon setting the matter for hearing, the Town Clerk shall notify the applicant of the date and time of such hearing. At the conclusion of the hearing, the Town Council shall either sustain the decision of the Town Administrator or direct the Town Administrator to issue a registration.

3. *Other enforcement.* Nothing in this section shall prohibit the Town from enforcing this section by other means.
7. *Exemptions.* The registration requirements required of this section shall not be required by persons exempt pursuant to Rule Chapter 62-722, Florida Administrative Code, as amended from time to time.
8. Effective October 1, 2001, an approved registration as described herein must be held by all haulers who provide collection services for recovered materials with the Town.

SECTION 3. If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. It is the intention of the Town Council of the Town of Davie, Florida that the provisions of this ordinance shall become and be made a part of the Town of Davie Code of Ordinances; and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 5. This Ordinance shall become effective upon the approval of the Town Council.

PASSED ON FIRST READING this _____ day of _____, 2002.

PASSED ON SECOND READING this _____ day of _____, 2002.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ day of _____, 2002.